

Message Text

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FOLLOWING REPEAT GENEVA 2588 ACTION SECSTATE

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C O N F I D E N T I A L GENEVA 2588

DEPT PASS ALL DIPLOMATIC POSTS EXCEPT GENEVA, USUN
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FROM USDEL LOS

E.O. 11652: GDS

TAGS: PLOS

SUBJ: LOS: CLASSIFIED MID-SESSION SUMMARY FOR ENDING
APRIL 10

1. SUMMARY: THIS CABLE SHOULD BE READ IN CONNECTION
WITH THE ACCOMPANYING UNCLASSIFIED SUMMARY. CLASSIFIED
PART OF THE REPORT WILL BE CONFINED TO AN ASSESSMENT OF
PRINCIPAL TRENDS IN THE NEGOTIATION, OUTSTANDING DIF-
FERENCES, AND PROSPECTS FOR THE REMAINDER OF THE
SESSION. IN BOTH COMMITTEE I AND COMMITTEE II THE
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NEXT WEEK OR TEN DAYS ARE LIKELY TO BE THE CRITICAL
MOMENTS OF THE CONFERENCE IN DETERMINING WHETHER OR
NOT GENERAL AGREEMENT IS POSSIBLE ON REASONABLE PER-
CENTAGE OF BASIC DIFFERENCES WHICH WILL PERMIT THE

EMERGENCE AT THIS SESSION OF SINGLE TEXTS AT THE COMMITTEE LEVEL ON ESSENTIAL ELEMENTS OF THE PACKAGE. SUCH A RESULT WOULD IN JUDGMENT OF USDEL REPRESENT AN ACCEPTABLE AND INDEED OPTIMUM MEASURE OF SUBSTANTIAL PROGRESS. WHILE THERE IS OBVIOUSLY A GENERAL WILL TO MAKE SUFFICIENT PROGRESS TO SUPPORT A FURTHER FINAL EFFORT, THERE REMAIN A NUMBER OF ISSUES ON WHICH FUNDAMENTAL DIFFERENCES EXIST, AND THE POSSIBILITY THAT THOSE STATES WHICH FORESEE NO SUBSTANTIAL BENEFITS FROM THE MAIN TREND OF THE NEGOTIATION WILL EXERCISE THEIR POWERS TO DELAY AND OBSTRUCT THOSE AGREEMENTS WHICH ARE WITHIN THE REALM OF ATTAINMENT.

A. COMMITTEES: COMMITTEE I PAPER ON BASIC CONDITIONS PRESENTED BY THE WORKING GROUP CHAIRMAN OF C-I, WHILE GROUP OF 77 ORIENTED, DOES, HOWEVER, MAKE CERTAIN MOVES TOWARD THE FUNDAMENTAL NEEDS OF DEVELOPED COUNTRIES AND IF LDC'S PROVE PREPARED GENUINELY TO NEGOTIATE ON ITS BASIS COULD PRODUCE AGREED TEXT ON BASIC CONDITIONS AND OTHER PARTS OF COMMITTEE I PACKAGE. ON COMMITTEE II ISSUES, THE KEY PROBLEM IS HOW AND WHEN THE CAREFULLY BALANCED ARTICLES ON THE ECONOMIC ZONE AGREED UPON IN THE EVENSEN GROUP WILL BE INTRODUCED IN COMMITTEE II AND WHETHER OR NOT THEY CAN BE RECONCILED INTO A SINGLE COMMITTEE TEXT WITHOUT DISTORTION BY THE ESSENTIALLY COASTAL-LANDLOCKED ACCOMMODATION REFLECTED IN NJENGA DRAFT EXT.

B. OTHER CONFERENCE CONCERNS: INCONCLUSIVE CORRIDOR CONVERSATION CONTINUES WITH REGARD TO TIMING AND LOCATION OF SUBSEQUENT SESSION OR SESSIONS. US IS NOT ENCOURAGING SUCH SPECULATION AT THIS TIME. DURING PAST WEEK GROUP OF 77 HAD BEEN CONSIDERING A NEW MORATORIUM RESOLUTION; HOWEVER, ON FRIDAY THE CONFERENCE PRESIDENT ADVISED CHAIRMAN OF THE GROUP OF 77 THAT HE WOULD CONSIDER SUCH AN EFFORT OUT OF ORDER AND THE CONFIDENTIAL

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GROUP, AFTER SOME DISCUSSION, AT LEAST FOR THE MOMENT, HAS AGREED TO SUSPEND DISCUSSION. END SUMMARY.

2. COMMITTEE I - DEEP SEABEDS:

A. GENERAL- THE CONTENTIOUS QUESTION OF DIRECT EXPLOITATION BY THE AUTHORITY HAS BEEN TO A LARGE DEGREE SIDESTEPED BY FOCUS OF DISCUSSIONS ON BASIC CONDITIONS, AND ON JOINT VENTURES AS THE PRIMARY FORM OF EXPLOITATION. HOWEVER, THE GROUP OF 77 POSITION ON THE ISSUE OF DIRECT EXPLOITATION BY THE AUTHORITY IS LIKELY TO EMERGE AGAIN WHEN COMMITTEE ADDRESSES QUESTION OF MACHINERY ARTICLES. WE BELIEVE THAT

THERE IS A GOOD CHANCE THAT AGREEMENT ON BASIC CONDITIONS, IF ACHIEVED, CAN BE ACCOMPANIED BY A COMMITMENT IN PRINCIPLE TO REQUIRE EARLY DEVELOPMENT OF DETAILED PROVISIONAL REGULATIONS, BY PROVISIONAL MACHINERY. AT THIS MOMENT, THE MODERATES APPEAR TO BE IN CONTROL OF THE MAIN THRUST OF C-I NEGOTIATIONS AND WE HAVE HOPES FOR A SUCCESSFUL NEGOTIATION IN NEXT TWO WEEKS ON CHAIRMAN'S PAPER. HOWEVER, IT IS IMPORTANT TO KNOW THAT PERU AND BRAZIL MAINTAIN A FIRM HOLD ON THEIR POSITIONS AS LDC SPOKESMEN AND LEADERS.

B. WITH RESPECT AREAS RESERVED FOR FUTURE DEVELOPMENT, THE US HAS EXPLORED IN INFORMAL CONSULTATIONS SYSTEM THAT WOULD PRESERVE THE FIRST COME, FIRST SERVE CONCEPT AND SUBJECT EXPLOITATION IN RESERVED AREAS TO THE SAME TERMS AND CONDITIONS AS IN NON-RESERVED AREAS WITH EXCEPTION OF FINANCIAL ARRANGEMENTS AND TECHNOLOGY TRANSFER. CONCEPT HAS BEEN WELL RECEIVED, ALTHOUGH WE EXPECT GROUP OF 77 TO PROPOSE THAT RESERVED AREAS BE SUBJECT TO DIRECT EXPLOITATION BY THE AUTHORITY. USSR PROPOSAL FOR RESERVATION OF AREAS EXCLUSIVELY FOR CONTRACTING STATE USE WHILE LEAVING REMAINDER SUBJECT TO DIRECT EXPLOITATION IS CLEAR EXPRESSION OF PARALLEL EXPLOITATION SYSTEM WHICH HAS BEEN LARGELY IGNORED BY LDC'S. SOVIET INSISTENCE THAT THIS PROPOSAL BE INCLUDED IN CHAIRMAN'S DRAFT, HOWEVER, IS MAKING NEGOTIATION OF OUR OWN APPROACH WHICH SIDESTEPS DIRECT EXPLOITATION ISSUE VERY DIFFICULT. CONFIDENTIAL

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C. IF C-I NEGOTIATIONS CAN LEAVE ASIDE ISSUE OF AUTHORITY'S POWER TO EXPLOIT ON ITS OWN BEHALF, AND PRICE AND PRODUCTION CONTROLS, WE BELIEVE CONCLUSION OF WORK ON BASIC CONDITIONS WILL BE FOLLOWED BY NEGOTIATION OF KEY ARTICLES ON COUNCIL, ASSEMBLY, AND DISPUTE SETTLEMENT ORGAN. WITH EXCEPTION OF BRAZIL AND PERU, MOOD AMONG LDC'S SUGGESTS REAL DESIRE TO WRAP UP AS MANY MAJOR ISSUES AS POSSIBLE THIS SESSION.

3. COMMITTEE II ISSUES - TERRITORIAL SEA, STRAITS, ECONOMIC ZONE:

A. GENERAL: IF AGREEMENT CAN BE REACHED ON DIFFICULT BALANCE OF RIGHTS AND OBLIGATIONS IN ECONOMIC ZONE, BASIC ELEMENTS OF SINGLE PACKAGE ON COMMITTEE II ISSUES COULD EMERGE. DESPITE SOME CONTINUING EFFORTS OF TERRITORIALISTS THERE IS LITTLE EFFECTIVE OPPOSITION TO 12 MILE TERRITORIAL SEA IF OTHER ISSUES ARE SATISFACTORILY RESOLVED. DIRECT OPPOSITION TO STRAITS OBJECTIVES REMAINS LARGELY CONFINED TO RELATIVELY SMALL NUMBER OF STRAITS STATES AND WE ARE CONTINUING OUR EFFORTS TO RESOLVE PARTICULAR PROBLEMS.

B. EVENSEN GROUP: RECEPTION OF RESULTS OF PRIVATE NEGOTIATIONS ON THE ECONOMIC ZONE WITHIN THE EVENSEN GROUP LIE AT THE HEART OF CONFERENCE OUTCOME. EVENSEN IS UNDER GREAT PRESSURE TO SURFACE A DRAFT IN ORDER TO SPEED NEGOTIATION AND OFFSET RISING CURRENT OF UNREST IN GROUP OF 77. THE EVENSEN GROUP HAS COMPLETED WORK ON MAIN ARTICLES AND ON A NUMBER OF FISHERIES ARTICLES WITH MAJOR EXCEPTION OF THOSE ON TUNA WHICH ARE STILL BEING NEGOTIATED. THE OVERALL BALANCE CONSTRUCTED IS ESSENTIALLY ONE BETWEEN COASTAL AND MARITIME INTERESTS, AND THE GROUP HAS BEEN UNABLE TO AGREE ON INCREASINGLY INSISTENT QUESTION OF ACCESS OF LANDLOCKED AND GEOGRAPHICALLY DISADVANTAGED STATES TO FISHERIES IN ECONOMIC ZONE OF THEIR NEIGHBORS. HOPEFULLY COMMITTEE I BUREAU TEXT WILL PROVIDE MEANS OF INCLUDING EVENSEN TEXTS WITHOUT INCURRING RESENTMENT AT THEIR AUTHORSHIP AND HOPEFULLY WITHOUT DISTORTING CAREFUL COMPROMISES
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THAT HAVE BEEN REACHED. IN VIEW OF CIRCULATION OF AFRICAN TEXT WHICH MOVED STRONGLY TOWARD ACCOMMODATION OF LANDLOCKED AND GEOGRAPHICALLY DISADVANTAGED STATES, BUT IS OTHERWISE STRONGLY COASTALLY ORIENTED, KEY TO OUTCOME WILL BE DEGREE TO WHICH CHAIRMAN WILL ADOPT AS HIS OWN THE EVENSEN TEXT OR MOVE TOWARD GROUP OF 77 POSITION. SINCE FORTHCOMING AFRICAN APPROACH TO LANDLOCKED INTERESTS IS NOT LIKELY TO BE ACCEPTABLE TO A NUMBER OF LATINS, CHAIRMAN COULD WELL ADOPT EVENSEN TEXT ALONG WITH A MORE MODERATE ARTICLE ON THIS ISSUE WITH WHICH SOME EUROPEANS ALSO HAVE EXTREME DIFFICULTIES. IF THIS SCENARIO IS FOLLOWED, CHAIRMAN OF C-II WOULD NEGOTIATE TEXT PRIVATELY WITH CONFERENCE LEADERS AND THEREAFTER ON A BROADER BUT STILL INDIVIDUAL AND PRIVATE BASIS WITH MEMBERS OF REGIONAL GROUPS. APART FROM THE GENERAL PROBLEM OF BALANCE OF MARITIME, COASTAL, AND LANDLOCKED INTERESTS, A NUMBER OF KEY ISSUES ARE UNRESOLVED, INCLUDING ARTICLES ON TUNA AND JURISDICTION OVER THE MARGIN BEYOND TWO HUNDRED MILES.

B. ANADROMOUS AND HIGHLY MIGRATORY PROVISIONS: THE DRAFT IN THE EVENSEN GROUP ON ANADROMOUS SPECIES WHICH IS THE RESULT OF EXTENSIVE NEGOTIATIONS BETWEEN SALMON PRODUCING AND SALMON FISHING STATES SHOULD BE RELATIVELY NONCONTENTIOUS IF NOT OPPOSED ON DOCTRINAL GROUNDS BY AFRICANS. THE ARTICLE ON HIGHLY MIGRATORY SPECIES IS MORE DIFFICULT. EVENSEN'S STAFF HAS INDICATED THAT THEIR INCLINATION IS TOWARD A MORE COASTALLY ORIENTED ARTICLE. INTENSIVE NEGOTIATIONS CONTINUE.

C. CONTINENTAL MARGIN: BROAD MARGIN STATES HAVE MADE CLEAR THAT JURISDICTION OVER THE MARGIN IS AN

ESSENTIAL OBJECTIVE AND WHILE SUBSTANTIAL OPPOSITION REMAINS TO ANY EXTENSION OF JURISDICTION BEYOND 200 MILES, A COMPROMISE INVOLVING REVENUE SHARING BEYOND 200 MILES APPEARS TO BE ONLY WIDELY SUPPORTED COMPROMISE TEXT THAT CAN BE ACHIEVED. TECHNICAL DISCUSSIONS ON MEANS OF DETERMINING EDGE OF MARGIN HAVE GONE AS FAR AS THEY CAN GO WITHOUT POLITICAL ACCOMODATION.

4. COMMITTEE III: MARINE SCIENTIFIC RESEARCH:
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QUESTION OF CONSENT REGIME VS OBLIGATION IS FOUNDERING TO SOME EXTENT ON DOCTRINAL PERCEPTION OF NATURE OF COASTAL STATE RIGHTS IN ECONOMIC ZONE. MAIN EVENT IN SCIENCE NEGOTIATIONS THUS FAR HAS BEEN A NEW SOVIET PROPOSAL WHICH ABANDONS CONSENT REQUIREMENT FOR SHELF RESEARCH AND REQUIRES CONSENT FOR "RESEARCH RELATED TO THE EXPLORATION AND EXPLOITATION OF THE LIVING AND NON-LIVING RESOURCES OF THE ZONE" AND PROVIDES FOR AN OBLIGATION REGIME FOR NON-RESOURCE RELATED RESEARCH. THIS DISTINCTION HAS ELICITED A GREAT DEAL OF INTEREST AND ADDITIONAL INFORMAL TEXTS WHICH DRAW UPON THE SOVIET DISTINCTION WITH VARIABLES. INFORMAL REPORTS INDICATE THAT THE GROUP OF 77 HAS NOT AS YET EITHER ACCEPTED OR REJECTED SUCH A DISTINCTION, ALTHOUGH THE AFRICAN DRAFT ON THE ECONOMIC ZONE GIVES TO COASTAL STATE AUTHORITY TO REGULATE SCIENTIFIC RESEARCH IN ECONOMIC ZONE. WE BELIEVE THAT WE MUST BE PREPARED TO NEGOTIATE ON THE BASIS OF SUCH A DISTINCTION IF WIDESPREAD SUPPORT DEVELOPS FOR IT.

5. COMMITTEE III - MARINE POLLUTION:

A. IN GENERAL, COMMITTEE III HAS WORKED ON LESS CONTROVERSIAL ENVIRONMENTAL ISSUES WHILE AWAITING EVENSEN GROUP NEGOTIATIONS ON CRITICAL VESSEL POLLUTION AND DOUBLE STANDARD ISSUES WHICH ARE EXPECTED TO BEGIN APRIL 16. ALTHOUGH NO SUBSTANTIAL NEGOTIATIONS HAVE YET TAKEN PLACE ON ISSUE OF VESSEL SOURCE POLLUTION STANDARD SETTING AND ENFORCEMENT, THE TREND APPEARS TO BE IN FAVOR OF ACCEPTANCE OF INTERNATIONAL STANDARD SETTING WITH COASTAL STATE ENFORCEMENT IN AT LEAST PORTION OF THE ECONOMIC ZONE AS WELL AS PORT STATE-FLAG STATE ENFORCEMENT, COUPLED WITH SOME "HAZARDOUS AREA" EXCEPTION. NJENGA (KENYA) HAS SAID THAT HE DOES NOT FAVOR COASTAL STATE STANDARD SETTING AND IS CONCERNED WITH COASTAL STATE ENFORCEMENT RIGHTS.

B. GROUP OF 77 CONTINUES TO MEET PRIVATELY IN ATTEMPT TO PRODUCE THEIR TEXT ON ENVIRONMENTAL ISSUES. POSSIBILITY OF COMPLETING POLLUTION TEXT AT COMMITTEE LEVEL BY MAY 10 HINGES ON OUTCOME OF EVENSEN GROUP

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DISCUSSIONS. WITHIN COMMITTEE, CANADA CONTINUES TO PUSH FOR BROAD AUTHORITY BUT APPEARS TO BE MAKING LITTLE HEADWAY IN GROUP OF 77. PRIVATE DISCUSSIONS WITH DEVELOPING COUNTRIES INDICATE CONSIDERABLE WILLINGNESS TO AVOID COASTAL STATE STANDARD-SETTING IN THE ECONOMIC ZONE EXCEPT IN CERTAIN AREAS WHERE SPECIFIC PROBLEMS EXIST AND THERE APPEARS TO BE WIDE DEVELOPING COUNTRY SUPPORT FOR COASTAL STATE ENFORCEMENT OF INTERNATIONAL STANDARDS IN ECONOMIC ZONE. RECENT PUBLIC AND PRIVATE STATEMENTS INDICATE GROWING SUPPORT FOR US PORT STATE ENFORCEMENT ARTICLE AMONG GROUP OF 77 SO LONG AS IT IS A SUPPLEMENT TO AND NOT AN ALTERNATIVE TO COASTAL STATE ENFORCEMENT.

C. ON OCEAN DUMPING, ALMOST ALL STATES FEEL THIS IS A SEPARATE ISSUE AND THAT COASTAL STATE MUST BE ABLE TO CONTROL IT IN ITS ECONOMIC ZONE.

D. DOUBLE STANDARD: SOME PRIVATE DISCUSSIONS INDICATE A DESIRE TO APPROACH QUESTION USING CONCEPT OF DUE DILIGENCE AND ISSUE WILL BE DISCUSSED IN EVENSEN GROUP.

E. CONTINENTAL SHELF STANDARDS: PRIVATE DISCUSSIONS INDICATE WIDE-SPREAD POSITION THAT STATES WILL NOT AGREE TO BE FORCED IN ADVANCE TO COMPLY WITH INTERNATIONAL STANDARDS SET BY A SUBSEQUENT CONFERENCE. US INTENDS, IF NECESSARY, TO ATTEMPT TO ACHIEVE AGREEMENT TO COMPLY WITH "GENERALLY ACCEPTED" INTERNATIONAL STANDARDS.

F. ENVIRONMENTAL ASSESSMENT: US PROPOSAL URGING ENVIRONMENTAL ASSESSMENTS AND CONSULTATIONS ON PLANNED ACTIVITIES WITH SIGNIFICANT POLLUTION RISK WERE AGREED AT SMALL PRIVATE NEGOTIATING GROUP OF COMMITTEE II BUT STILL REQUIRES CONSIDERATION IN WORKING GROUP ON POLLUTION.

6. DISPUTE SETTLEMENT: COMPULSORY DISPUTE SETTLEMENT PROCEDURES ARE CONTINGENTED BY MANY IN GROUP (INCLUDING US) AS APPLYING TO ALL ASPECTS OF FINAL TREATY SUBJECT TO CERTAIN EXCEPTIONS WITH POSSIBILITY OF SPECIAL PROCEDURES FOR FISHING AND FOR DEEP SEABEDS EITHER AS

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PRELIMINARY OR ALTERNATIVE MEANS. ON THE OTHER HAND OTHERS FAVOR A "FUNCTIONAL APPROACH": SPECIFIC PROCEDURES FOR SPECIFIC ARTICLES WITH NO REPEAT NO AGREEMENT ON BLANKET CDS. THE USSR FAVORS A TRIBUNAL FOR DEEP SEABEDS ONLY, ARBITRATION FOR FISHERIES AND

NOTHING ELSE AT THIS STAGE. FRANCE HAS PROPOSED SEPARATE COMMISSIONS FOR FISH, POLLUTION AND SCIENTIFIC RESEARCH MATTERS. A TRIBUNAL FORM OF DISPUTE SETTLEMENT IN ECONOMIC ZONE IS OPPOSED BY TANZANIA AND INDIA AND SOME OTHER LDC'S WHILE OPPOSITION TO BINDING DISPUTE SETTLEMENT IN GENERAL IN ECONOMIC ZONE CONTINUES FROM ARGENTINA, BRAZIL AND HONDURAS. IT IS HOPED THE ACTIVE ROLE OF ADEDE (KENYA) WHO HAS REPLACED GALINDO POHL AS CO-CHAIRMAN OF GROUP, WILL HELP SOLIDIFY AFRICAN SUPPORT. IN AN EFFORT TO REACH A COMPROMISE ON FORM OF CDS, WORKING GROUP TENTATIVELY AGREED ON PROCEDURES WHICH WOULD ALLOW CONTRACTING PARTY TO DECLARE WHETHER IT ACCEPTS THE JURISDICTION OF AN ARBITRAL TRIBUNAL, LOS TRIBUNAL, OR ICJ, OR ANY TWO OR THREE OF THEM. COMPROMISE ARTICLES HAVE NOT BEEN DISCUSSED IN DETAIL AND ARE BEING REVISED. INTRODUCTION BY AUSTRALIAN DEL LAUTERPACHT OF IDEA OF COMPULSORY CONCILIATION WHICH INITIALLY RECEIVED SUBSTANTIAL SUPPORT CAUSED SLOWDOWN IN PROGRESS OF GROUP AND REPRESENTED MAJOR THREAT THAT ONLY CONCILIATION AND NOT BINDING DISPUTE SETTLEMENT WOULD ULTIMATELY EMERGE.

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